U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted] **Public Copy**

File: EAC 99 081 50490 Office: Vermont Service Center Date: APR 13 2001

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Outstanding Professor or Researcher pursuant to Section 203(b)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(B)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an opto-electronics research and development firm. It seeks to classify the beneficiary as an outstanding researcher pursuant to section 203(b)(1)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(B). The petitioner seeks to employ the beneficiary permanently in the United States as an opto-electronics researcher. The director determined that the petitioner had not established that the beneficiary is recognized internationally as outstanding in his academic field, or that the beneficiary has at least three years of qualifying research experience, as required for classification as an outstanding researcher.

On appeal, counsel argues that the petitioner has established the beneficiary's eligibility, and that the denial of the petition can only be the result of inattention by the Service.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A)through (C):
>
> > (B) Outstanding Professors and Researchers. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien is recognized internationally as outstanding in a specific academic area,
> > >
> > > (ii) the alien has at least 3 years of experience in teaching or research in the academic area, and
> > >
> > > (iii) the alien seeks to enter the United States --
> > >
> > > > (I) for a tenured position (or tenure-track position) within a university or institution of higher education to teach in the academic area,
> > > >
> > > > (II) for a comparable position with a university or institution of higher education to conduct research in the area, or
> > > >
> > > > (III) for a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has

achieved documented accomplishments in an academic field.

Service regulations at 8 C.F.R. 204.5(i)(3) state that a petition for an outstanding professor or researcher must be accompanied by:

(i) Evidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition. . . . ;

(ii) Evidence that the alien has at least three years of experience in teaching and/or research in the academic field. Experience in teaching or research while working on an advanced degree will only be acceptable if the alien has acquired the degree, and if the teaching duties were such that he or she had full responsibility for the class taught or if the research conducted toward the degree has been recognized within the academic field as outstanding. Evidence of teaching and/or research experience shall be in the form of letter(s) from former or current employer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien.

This petition was filed on January 12, 1999 to classify the beneficiary as an outstanding researcher. Therefore, the petitioner must establish that the beneficiary had at least three years of research experience as of January 12, 1999, and that the beneficiary's work has been recognized internationally within the field as outstanding.

As noted above, section 203(b)(1)(B)(ii) of the statute requires that the beneficiary have at least three years of experience as a researcher. 8 C.F.R. 204.5(i)(3)(ii) states, in pertinent part, "[e]xperience in . . . research while working on an advanced degree will only be acceptable . . . if the research conducted toward the degree has been recognized within the academic field as outstanding." The beneficiary, 28 years old at the time he filed the petition, was a student until April 1997, less than two years before he filed the petition in January 1999. The petitioner must, therefore, establish that the beneficiary's graduate research has been recognized within the academic field as outstanding.

Service regulations at 8 C.F.R. 204.5(i)(3)(i) state that a petition for an outstanding professor or researcher must be accompanied by "[e]vidence that the professor or researcher is recognized internationally as outstanding in the academic field specified in the petition." The regulation lists six criteria, of which the petitioner must satisfy at least two. It is important to note here that the controlling purpose of the regulation is to establish international recognition, and any evidence submitted to meet these criteria must therefore be to some extent indicative of

international recognition. The petitioner claims to have satisfied all six of the criteria, listed below.

Documentation of the alien's receipt of major prizes or awards for outstanding achievement in the academic field.

The petitioner documents the beneficiary's receipt of high school and college prizes, but the record does not demonstrate that the beneficiary received any such awards as a fully-trained professional rather than as a student. Research grants, which pay for a significant proportion of scientific research, amount to a source of funding rather than a prize or award for past achievements.

Documentation of the alien's membership in associations in the academic field which require outstanding achievements of their members.

The beneficiary is a member of the Institute of Electrical and Electronics Engineers (IEEE), but the record does not show that this association requires outstanding achievements of its members.

Published material in professional publications written by others about the alien's work in the academic field. Such material shall include the title, date, and author of the material, and any necessary translation.

The petitioner notes that other researchers have cited the beneficiary's published work. Such articles are not about the beneficiary's work, however; they merely contain bibliographical citations of previous articles by the beneficiary and dozens of other researchers in the field. By the petitioner's logic, one of the beneficiary's own articles in the record is about L. DiMarco, S.R. Forrest, L.J. Olafsen and several other researchers. The article in question, however, is not about these individuals; it is about the output power of a two-dimensional laser diode array. Because scientific research rarely takes place in a vacuum, instead building on the finding of others, professional ethics demand that due credit adheres to previous works referenced during the preparation of the article.

The petitioner has not shown that others have written articles which focus specifically on the beneficiary's work, rather than simply mentioning it. These citations are more properly considered in the context of the impact of the beneficiary's own published work, addressed in a separate criterion further below.

Evidence of the alien's participation, either individually or on a panel, as the judge of the work of others in the same or an allied academic field.

The petitioner asserts that the beneficiary satisfies this criterion because the beneficiary "was charged with supervising graduate students." Supervision of subordinates in this manner is not indicative of international recognition as an outstanding researcher; such supervision occurs in every academic setting with a hierarchical structure. The record does not show that the petitioner has acted as a judge in a significant, international setting.

Evidence of the alien's original scientific or scholarly research contributions to the academic field.

Obviously, the petitioner cannot satisfy this criterion simply by listing the beneficiary's past projects, and demonstrating that the beneficiary's work was "original" in that it did not merely duplicate prior research. Research work that is unoriginal would be unlikely to secure the beneficiary a master's degree, let alone classification as an outstanding researcher. Because the goal of the regulatory criteria is to demonstrate that the beneficiary has won international recognition as an outstanding researcher, it stands to reason that the beneficiary's research contributions have won comparable recognition. To argue that all original research is, by definition, "outstanding" is to weaken that adjective beyond any useful meaning, or to presume that most research is "unoriginal."

Dr. Gregory H. Olsen, president of the petitioning company, states that the petitioner has submitted letters from "[l]eading scientists from all over the world." All of the initial witnesses, however, knew or worked with the beneficiary when the beneficiary was a graduate student. The dispersal of the beneficiary's former collaborators to several countries does not make the beneficiary's reputation "international" in any meaningful sense; the letters do not serve as direct evidence that the beneficiary's work is recognized as outstanding by physicists with no prior connection to the beneficiary. We discuss examples of these letters here.

Professor Vadim V. Korablev of St. Petersburg State Technical University supervised the beneficiary's doctoral research at that institution. Prof. Korablev states:

> In his dissertation [the beneficiary] developed a new theoretical approach to the analysis of crystal growth under vacuum conditions. The developed model allows to explain all main features of semiconductor structure formation from group-III and V elements molecular fluxes. . . . The results of the work have become a valuable tool for crystal growers allowing more precise settings of growth parameters and optimization of the growth process.

Dr. Sergey Y. Karpov, now a senior researcher at Soft-Impact, Ltd., oversaw the beneficiary's doctoral research along with Prof. Korablev. Dr. Karpov states that the beneficiary is "very talented" and "a top level specialist in his field," but offers little detailed information about the petitioner's accomplishments. Dr. Karpov does assert that the beneficiary's "study of compounds surface kinetics was crucial to the successful outcome of [two] projects" funded by the International Scientific Federation.

Dr. Georgiy M. Guryanov, now at North Carolina State University, first worked with the beneficiary in 1993. Dr. Guryanov states:

> [The beneficiary] was the first to develop a two component kinetic theory for the adsorption and desorption processes on the growing surface of III-V compounds. His model gave a very logical, scientifically correct and thorough overview of the kinetics of epitaxial growth. . . . Another important contribution is in regards to the approach proposed by [the beneficiary] that can be generalized for the description of growing surfaces of other semiconductor materials. This leads not only to the new view regarding beam epitaxy growth but also to a new level of growth technology resulting in the improvement of crystalline quality of grown materials.
>
> [The beneficiary] has an established reputation as an internationally recognized expert in crystal growth due to his exceptional research talents and abilities.

Dr. Gleb Shtengel, now at Lucent Technologies, states that he "met [the beneficiary] when he started a graduate research project at Ioffe Physical and Technical Institute." Dr. Shtengel describes the beneficiary's work with crystal growth and states:

> [The beneficiary's] innovative theory accounts for numerous effects observed experimentally as well as reveals the physical origins of several phenomena occurring during crystal growth which were not explained before. . . . [The beneficiary's] model had significant impact in that it changed the current understanding of crystal growth resulting in the improved technological growth procedures and also stimulated intensive research in the area. . . .
>
> [The beneficiary's] outstanding research abilities, persistence and determination resulted in several far-reaching scientific achievements, one of which is the highest power ever obtained from single laser chip at wavelength about one micron.

The beneficiary's mentors and collaborators clearly hold a high opinion of the beneficiary's innovations, but the petitioner has not shown that the international scientific community at large shares these appraisals of the beneficiary's work. The visa

classification is for "outstanding researchers" rather than "experienced researchers" or "researchers who have produced original findings," and the petitioner must show that the beneficiary has an international reputation as an outstanding researcher.

Evidence of the alien's authorship of scholarly books or articles (in scholarly journals with international circulation) in the academic field.

In the absence of evidence that most researchers never publish their findings, or that the great majority of articles submitted for publication are rejected, we cannot find that the very act of publication itself demonstrates international recognition as an outstanding researcher. Instead, we must evaluate the beneficiary's publication history and determine whether it has won recognition owing to its outstanding caliber.

The beneficiary is the author of several published articles in internationally circulated journals. One of these articles has been cited six times in other articles; two other articles have each been cited twice. These figures, however, are somewhat misleading. Of the ten citations, five are self-citations by the beneficiary and/or one of his collaborators. Self-citations of this kind, while common and perfectly legitimate, are not evidence of outside recognition.

The remaining five citations derive from three research groups. For the Service to conclude that these five citations are evidence of outstanding ability, the petitioner must demonstrate that this level of citation is a relatively rare achievement; that is, that only outstanding, internationally-recognized researchers produce work that attracts the attention of three other research groups.

The director informed the petitioner that the evidence accompanying the petition was insufficient to establish eligibility, and instructed the petitioner to submit further evidence, particularly "recommendations from disinterested wor[l]d renown[ed] experts in the field of endeavor."

In response, counsel asserts "it is obvious . . . that the reviewing officer did not read the supporting letters" submitted with the initial petition. Counsel contends that, while the beneficiary won the claimed awards while he was still a student, this merely demonstrates that the beneficiary "has attained scientific and mathematical academic excellence since a very young age." The flaw in this argument is that what may be an outstanding achievement for a high school or undergraduate student may be well within the abilities of individuals who have completed their training. Winning student prizes shows that the beneficiary was an excellent student, but he does not seek employment as a student.

The petitioner has not shown that the beneficiary has won awards which are available to practicing researchers in the field, rather than prizes which are limited to students who are still training for occupations which they have yet to truly enter.

Furthermore, many of the "awards" mentioned by counsel are in fact research grants, used to fund ongoing research, rather than prizes or awards which recognize prior outstanding achievement. A research project which has not yet begun, or is far from completion, is not an outstanding achievement.

In a similar fashion to the above discussion, counsel discusses previous submissions but does not offer persuasive arguments to show that the initial submission established the beneficiary's eligibility. Counsel repeats the assertion that the petition is supported by "letters of recommendation by leading scientists from all over the world," and does not address the director's request for letters from independent experts, rather than the beneficiary's former professors who have since moved to other countries. If the only individuals who value the beneficiary's work are his former mentors, then it is immaterial whether all of those individuals are still in the same country.

The petitioner submits four additional letters, which, like the original letters, are from professors at institutions where the beneficiary has studied and officials of companies where the beneficiary has worked. These individuals assert that several prestigious institutions rely on the beneficiary's research, such as the Massachusetts Institute of Technology, Stanford University and the Naval Research Laboratory. The record contains no first-hand statements from officials of these laboratories, either (1) to show the extent to which these laboratories rely on the beneficiary's work, or (2) to establish that these institutions only ever utilize findings which they consider to be outstanding. "Outstanding" is not synonymous with "useful."

The director denied the petition, concluding that the petitioner has not shown that the beneficiary is internationally recognized as outstanding. Because the director found that the beneficiary's research, both during and after his studies, has not been shown to be outstanding, and because the beneficiary had less than three years of post-degree experience as of the petition's filing date, it follows that the beneficiary has not met the requirement of three years of experience.

On appeal, the petitioner submits a brief from counsel but no new evidence. Counsel argues once again that the petitioner has satisfied all six of the regulatory criteria and that the director failed to consider the witness letters and other evidence.

Counsel's arguments are not persuasive. For example, counsel contends that the director ignored evidence that the beneficiary is a member of the IEEE, an association which requires outstanding achievement. The only evidence at all that supports this claim is a copy of the petitioner's IEEE membership card. The record contains no documentation from the IEEE to show that the association requires outstanding achievement as a condition for membership. Rather than citing any evidence of IEEE's membership requirements, or acknowledging the total lack of such evidence in the record, counsel attempts to shift the burden of proof to the Service by claiming that the director ignored the evidence of record.[1]

Counsel's assertions represent not so much an argument as a challenge for the director to overcome the petitioner's presumption of the beneficiary's eligibility. The burden, however, lies with the petitioner rather than the director, and the petitioner cannot meet this burden simply by claiming to have met it. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

While the beneficiary's professors, collaborators, and employers regard his work as outstanding, there is no evidence that this

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[1]The IEEE's membership requirements are very readily obtained through the association's official web site (www.ieee.org). According to the association itself, IEEE has over 350,000 members, making it extremely unlikely that IEEE is an exclusive organization that admits only outstanding engineers. Rather, the web site states "IEEE membership is open to virtually anyone with an interest in engineering or computer science." While some membership categories require a certain level of education and experience, these factors measure "professional competence" rather than outstanding achievements. This information proves beyond reasonable dispute that counsel's claims about IEEE membership are not only unsupported; they are demonstrably false, and necessarily affect the light in which we view the credibility of counsel's other assertions. Because the president of the petitioning entity has also claimed that IEEE membership "require[s] outstanding achievements," the petitioner has, like counsel, made a demonstrably false statement which is material to bene's eligibility. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

recognition extends any farther into the international research community. If the beneficiary's overall body of research has not won general recognition as outstanding, then it necessarily follows that his student work has not won such recognition and therefore the beneficiary does not have the requisite three years of qualifying research experience. As noted above, however, the record does not show that the beneficiary's student research has won such recognition. While the beneficiary's research has been published in journals and presented at conferences, publication and presentation are not equivalent to recognition. Indeed, it is not clear how such research could even have a chance to gain recognition without first being put forth in some public forum.

In this matter, the petitioner has not established that the beneficiary has been recognized internationally as outstanding in his field, or that the beneficiary has at least three years of qualifying research experience. Therefore, the petitioner has not established that the beneficiary is qualified for the benefit sought.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.